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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,234	12/15/2000	Brian J. Roberts	3345 - 2212	2950

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EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 07/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/738,234

Applicant(s)
Roberts et al.

Examiner
Clark F. Dexter

Art Unit
3724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 3, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-29, 31, and 41-44 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-29, 31, and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 3, 2003 has been entered.

Drawings

2. The corrected or substitute drawings filed April 3, 2003 have been received and placed in the file.

Specification

3. Because of the large number of changes made throughout the prosecution of this application, a substitute specification is required, particularly since the changes involve substantial changes in terminology.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute

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specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

Claim Rejections - 35 USC § 112, 1st paragraph

4. Claims 26-29, 31 and 41-44[✓] are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Upon careful review, the original disclosure does not provide support for a store checkout counter that is part of a dispenser or dispenser structure as set forth in claim 26. Rather, the original disclosure provides support for a dispenser or dispenser structure that is mounted on a counter top of a store checkout counter. As one way to obviate this matter, it is suggested in claim 26, line 1, to change "A" to --In combination, a store checkout counter and a--, and in line 2 to insert --the dispenser structure-- before "comprising" or the like. Similarly, in the dependent claims, it is suggested to change "A dispenser structure" to --The combination-- or the like.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 26, 27, 29, 31 and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer, pn 5,492,398, in view of Feola, pn 5,944,354, Tigner, pn 4,738,384, Mell, pn 2,482,714, and/or West, pn 2,578,115.

Schafer discloses a dispensing structure with almost every structural limitation of the claimed invention but lacks the housing being mounted adjacent the counter top of a counter. However, the Examiner takes Official notice that it is old and well known to provide counter tops for supporting dispensing devices for various known benefits including displaying and/or facilitating access to the dispensing device. Feola teaches one example of such an arrangement. Therefore, it would have been obvious to one having ordinary skill in the art to provide a counter having a counter top and providing the dispensing device adjacent thereto (e.g., on the counter

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top) for supporting the dispensing device of Schafer for the well known benefits including those described above.

Further, Schafer lacks the front and rear covers each hingedly mounted to a remainder of the housing. However, the Examiner takes Official notice that such a housing configuration is old and well known in the art for various known benefits including providing increased access into the housing. For example, housings are known which are similar to that of Schafer but have the top and rear portions of the housing form an integral L-shaped housing member that is hingedly mounted to the base such that upon opening the front cover, the top/rear member is free to be opened thus giving increased access to inside the housing. As one example, Tigner discloses a dispenser wherein the rear cover is hingedly mounted to a remainder of the housing. Additionally, Mell discloses one example of two covers hingedly mounted to a remainder of a housing for increased access to the area within the housing. Therefore, it would have been obvious to one having ordinary skill in the art to provide such a housing configuration on the device of Schafer for the well known benefits including that described above.

Further, regarding claims 41-44, the Examiner takes Official notice that arcuate dispenser covers are old and well known in the art and provide various well known benefits. Examples of such arcuate cover configurations are disclosed by West and Mell. Therefore, it would have been obvious to one having ordinary skill in the art to provide one or more arcuate cover portions on the dispenser of Schafer for the well known benefits.

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Allowable Subject Matter

CF 7. Claim 28 appears that it would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, ^{first} ~~second~~ paragraph, set forth in this Office action.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Prior art teaching many of the claimed features have been provided in support of the Examiner's taking of Official notice.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers Technology Center 3700 are: after-final responses - (703)872-9303; other formal/official papers - (703)872-9302. The fax number for informal/draft papers - (703)305-9835.



**Clark F. Dexter
Primary Examiner
Art Unit 3724**

cf
June 30, 2003